

December 13, 2011

James R. Sutton
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Informal Assistance
Our File No. I-11-207

Dear Mr. Sutton:

This letter responds to your request for advice regarding the conflict-of-interest and disclosure provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented. The Fair Political Practices Commission (“the Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your question is general in nature, and you have not provided any facts as to a specific upcoming governmental decision, we are treating your request as one for informal assistance.²

Please note that the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

Finally, the Commission is not permitted to offer advice on bodies of law outside the confines of the Act. We therefore offer no opinion on the application, if any, of other laws that may apply such as other conflict-of-interest laws or local ordinances.

QUESTIONS

1. Does a settlement payment for work performed from a private company to the wife of a county supervisor qualify as a gift or income under the Act?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. Is the payment reportable on the county supervisor's Statement of Economic Interests ("Form 700")?
3. Does the private company have any reporting obligations regarding this payment, considering it could have business before the County Board of Supervisors at some point?

CONCLUSIONS

1. A payment for work performed is considered income under the Act and a public official has a 50% interest in his or her spouse's income.
2. The settlement must therefore be reported on the county supervisor's Form 700 if the county supervisor's 50% share is more than \$500.
3. The Act regulates public officials, whether elected or appointed, and does not create requirements for private actors.³

FACTS

You are requesting advice on behalf of the Anschutz Entertainment Group and AEG Business Management Consulting (Shanghai) CO. Ltd. (collectively "AEG Shanghai") jointly with Mason Yost, who writes on behalf of Los Angeles County Supervisor Mike Antonovich. You have each been authorized to seek our advice on behalf of your clients.

AEG Shanghai is engaged in a dispute with Supervisor Antonovich's wife regarding fees she claims she earned in business dealings in China in 2008. The parties disagree regarding the terms of the agreement, but are negotiating a settlement amount. AEG Shanghai has agreed to pay the Supervisor's wife an amount greater than \$1,000. AEG Shanghai has potential business in Los Angeles regarding a proposed football stadium and convention center. While it is unclear whether AEG Shanghai will appear before the Los Angeles County Board of Supervisors or another county agency, the appearance is possible.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in any given governmental decision.

³ The exception to this general rule is lobbyists, who are not public officials, but are regulated by the Act based on their influence over public actors.

You have asked several specific questions regarding the application of the Act to your clients' situation. Because we do not have enough information regarding an upcoming governmental decision to do a full conflict-of-interest analysis, we are offering advice based on your questions. It is within the parameters and guidelines of the policy above that we respond.

1. *Does a settlement payment for work performed from a private company to the wife of a county supervisor qualify as a gift or income under the Act?*

The Act defines income, in part, as: "a payment received, including but not limited to any salary, wage, [or] advance." We have previously determined that, given the broad definition of "income" as "a payment received," a settlement payment for work performed is income under the Act.⁴ (See, e.g. *Molinari* Advice Letter, A-00-251.) Additionally, an individual's income includes the community property interest in the income of his or her spouse. (Section 82030(a).) Supervisor Antonovich therefore has a fifty percent interest in the amount that his wife receives from her settlement with AEG Shanghai.

Additionally, we assume that Supervisor Antonovich's interest in the settlement payment from AEG Shanghai will be \$500 or more, will be reported on his Form 700. If AEG Shanghai comes before the Board of Supervisors in the twelve months following Supervisor Antonovich's wife's receipt of the payment, the amount must be considered in any conflict-of-interest analysis when determining whether or not he can participate in a particular governmental decision. Again, as we noted, we do not have information regarding any governmental decisions at this time.

2. *Is the payment reportable on the county supervisor's Statement of Economic Interests ("Form 700")?*

The Supervisor will report his community property interest in his wife's settlement amount with AEG Shanghai on his Form 700, Schedule C, provided his community property interest is \$500 or more.

3. *Does the private company have any reporting obligations regarding this payment, considering it could have business before the County Board of Supervisors at some point?*

The Commission regulates public officials and enforces their reporting obligations. Private companies do not have disclosure obligations under the Act related to economic interests or payments made for services rendered. The Act, however, requires that lobbying disclosure reports provide the public with the identity of persons who make payments for the purposes of influencing the actions of the state legislature, the actions of the governor in approving or vetoing legislation, and quasi-legislative actions of California state agencies. Your facts regarding a settlement payment to Supervisor Antonovich's wife (in wife the supervisor has an

⁴ Section 87103 also provides that "promised" income creates an economic interest. Income is "promised" when the official has a legally enforceable right to the income. (Regulation 18703.3(a).)

economic interest) do not involve any state legislators or officials. We cannot provide advice as to the Los Angeles County or city ordinances.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl